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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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4 MARK NUNEZ, et al.,

5 v. Plaintiffs,

6 CITY OF NEW YORK, et al., 11 Civ. 5845 (LTS)

7 Defendants.

8 Conference

9 -----x
10 New York, N.Y.
11 August 10, 2023
12 2:00 p.m.

13 Before:

14 HON. LAURA TAYLOR SWAIN,

15 Chief District Judge

16 APPEARANCES

17 THE LEGAL AID SOCIETY PRISONERS' RIGHTS PROJECT

18 BY: MARY LYNNE WERLWAS

19 KAYLA SIMPSON

20 KATHERINE HAAS

21 HON. SYLVIA O. HINDS-RADIX,

22 Corporation Counsel of the City of New York

23 New York City Law Department

24 Attorney for Defendants

25 BY: SYLVIA O. HINDS-RADIX

JOHN SCHEMITSCH

SHERYL R. NEUFELD

DAMIAN WILLIAMS,

United States Attorney for the

Southern District of New York

Attorney for Intervenor Plaintiff

United States of America

BY: JEFFREY K. POWELL

LARA K. ESHKENAZI

Assistant United States Attorneys

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1 APPEARANCES (continued)

2
3 Attorneys for Monitor Steve J. Martin
4 BY: STEVEN J. MARTIN, Monitor
5 ANNA E. FRIEDBERG, Deputy Monitor6 Also Present: Christina Bucci Vanderveer
7 Associate Deputy Monitor8 Alycia M. Karlovich
9 Monitoring Team Analyst10 Dennis Gonzalez
11 Monitoring Team Associate Director12 Commissioner Louis Molina
13 New York City Department of Correction

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1 (Case called)

2 THE COURT: Again, good afternoon, and welcome to
3 counsel, to the members of the press and the public and city
4 officials in attendance and to everyone in the courthouse or
5 listening in, and thank you for attending today's conference.
6 I will ask today's speakers in the well to introduce themselves
7 starting with the monitoring team representatives.

8 MR. MARTIN: Good afternoon, your Honor. My name is
9 Steve Martin, the federal court monitor.

10 THE COURT: Good afternoon, Mr. Martin. You can be
11 seated.

12 MS. FRIEDBERG: Good afternoon, your Honor. My name
13 is Anna Friedberg. I'm the deputy monitor.

14 THE COURT: Good afternoon, Ms. Friedberg.

15 MS. KARLOVICH: Hi, I'm Alycia Karlovich, and I'm an
16 analyst for the monitoring team.

17 THE COURT: Good afternoon, Ms. Karlovich, and maybe
18 you could introduce your colleague next to you.

19 MR. GONZALEZ: Good afternoon. I'm Dennis Gonzalez,
20 the associate director.

21 THE COURT: Good afternoon, Mr. Gonzalez, and you can
22 be seated. And next, plaintiff's counsel?

23 MS. WERLWAS: Good afternoon. Mary Lynne Werlwais for
24 The Legal Aid Society Prisoners' Rights Project for the
25 plaintiff.

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1 THE COURT: Good afternoon, Ms. Werlwass.

2 MS. SIMPSON: Good afternoon, your Honor, Kayla
3 Simpson, The Legal Aid Society Prisoners' Rights Project also
4 for the plaintiffs.

5 THE COURT: Good afternoon, Ms. Simpson.

6 MS. HAAS: Good afternoon, your Honor, Katherine Haas,
7 also from The Legal Aid Society and also on behalf of the
8 plaintiff class.

9 THE COURT: Good afternoon, Ms. Haas. And from the
10 United States Attorney's Office?

11 MR. POWELL: Good afternoon, Jeffrey Powell
12 representing the government, your Honor.

13 THE COURT: Good afternoon, Mr. Powell.

14 MS. ESHKENAZI: Good afternoon, Laura Eshkenazi, also
15 representing the government.

16 THE COURT: Good afternoon, Ms. Eshkenazi.

17 MR. SCHEMITSCH: Good afternoon, your Honor, John
18 Schemitsch for the City of New York for defendants.

19 THE COURT: Good afternoon, Mr. Schemitsch.

20 MS. NEUFELD: Good afternoon, your Honor, Sheryl
21 Neufeld, also for the city defendants.

22 THE COURT: Good afternoon, Ms. Neufeld.

23 MR. MOLINA: Good afternoon, your Honor, Louis Molina,
24 Commissioner, New York City Department of Corrections.

25 THE COURT: Good afternoon, Commissioner.

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1 MS. HINDS-RADIX: Good afternoon, your Honor, Sylvia
2 Hinds-Radix, Corporation Counsel of the City of New York.

3 THE COURT: Good afternoon, Ms. Hinds-Radix.

4 I remind everyone as provided in the Court's
5 January 2021 standing order, no photography, recording or
6 retransmission of any part of this proceeding is permitted.

7 We are here today for a status conference. Since the
8 last status conference, the monitoring team filed a status
9 report on July 10th, 2023. In that status report, the
10 monitoring team made a finding pursuant to section G, paragraph
11 6 of the previously approved action plan. That finding was
12 that, (1) the city has not made sufficient progress under the
13 action plan, and (2) that incarcerated individuals and
14 Department of Corrections staff continue to face a grave risk
15 of harm. It has been more than a year since the action plan
16 went into effect, and these recent findings raise profound
17 questions as to whether the city and the department are capable
18 of making the facilities management changes that are necessary
19 to protect detainees and staff properly, and have the requisite
20 objectivity and transparency necessary to address serious
21 incidents reliably and to advance the court-ordered reforms.

22 In the time since the July 10th report was issued,
23 two more individuals have died while in custody at Rikers
24 Island. Since the last conference, the parties have also
25 engaged in court-ordered meet-and-confers to discuss the city

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1 and the department's plan to address the findings in the
2 monitoring team's January 10th, 2023, status report, to
3 discuss a potential briefing schedule for a motion for contempt
4 or to appoint a receiver and to discuss any other requests for
5 court-ordered relief in the interim.

6 The monitoring team filed a report on those
7 discussions on August 7th, and today we will review the
8 status of the defendants' response and issues of violence and
9 management failures at the Rikers jails and discuss next steps.
10 I'll be calling on each speaker during the proceedings. Each
11 time that you speak, please identify yourself by name for
12 clarity of the record and for the benefit of those who are
13 listening in to today's conference on the audio feed. To
14 ensure audibility and to minimize the need for movement around
15 the courtroom, I authorize you to speak from your seats today,
16 if that's comfortable for you and enables you to remain close
17 to the microphone. Each time that you speak, please speak
18 directly into the microphone at your table so that the people
19 who are on the phone line can hear you as well as the people in
20 the overflow courtroom.

21 Please don't interrupt each other or me during the
22 conference. If we interrupt each other, it's difficult to
23 create an accurate transcript. But having said that, I
24 apologize in advance for breaking this rule because I may
25 interrupt if I have questions. If anyone has any difficulty

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1 hearing me or another participant, please say something right
2 away. And it is important that those of you who are speaking
3 always speak clearly and answer any questions with words rather
4 than with sounds or gestures because, of course, I can see you,
5 but the people who are listening in can't and the reporter
6 needs to be able to make an accurate transcript of what is
7 being said.

8 I just have a few more introductory remarks. The
9 action plan identified key areas of reform for the department
10 to prioritize in light of foundational impediments to
11 implementing each requirement of the consent judgment. The
12 recent monitoring team reports indicate that progress on these
13 court-ordered reforms has stalled and that communication
14 channels between the monitoring team and the department have
15 broken down. The urgency of the danger facing those
16 incarcerated in the jails on Rikers can't be overstated. The
17 current state of affairs is as tragic and disturbing as it is
18 unacceptable.

19 I acknowledged and I reviewed carefully the letter and
20 declaration that defendants' counsel filed on August 9th. It
21 is true and it is commendable that there has been some
22 improvement since early 2022 in the appalling death and
23 casualty statistics associated with the Rikers jails. Turning
24 Rikers around has never presented an easy task, and the Court
25 recognizes that incident rates had skyrocketed between the time

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1 the consent judgment was entered in 2015 and the end of 2021.
2 But some improvement in selected statistics, even accompanied
3 by decisions to move detainees into more sound facilities, and
4 significant restaffing is not enough. At this juncture, the
5 Court expects and will demand a coordinated, rational response
6 to the monitoring team's findings and constructive work under
7 the observation and guidance of the monitoring team across a
8 targeted spectrum of responsibilities and urgent problems.
9 That work must be patently transformative of the Rikers jails
10 in the very near term.

11 I will be following the proposed agenda that was
12 submitted by the monitoring team in its August 7th, 2023,
13 report, and that begins with initial remarks by the monitoring
14 team. So I now call on Mr. Martin.

15 MR. MARTIN: Thank you, your Honor. Our August 7th
16 report provides updates on the following: Number one, DOC
17 steps to address some of our findings from the July 10th
18 report.

19 THE COURT: Mr. Martin, would you mind angling the
20 microphone down just a little bit more and projecting even a
21 little bit more.

22 MR. MARTIN: A little bit better? Do you ever tire of
23 correcting me on the microphone.

24 THE COURT: These microphones are quirky.

25 MR. MARTIN: Shall I start over?

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1 THE COURT: Yes, please.

2 MR. MARTIN: Thank you, your Honor. Our August 7th
3 report provides updates on the following. Number one, DOC
4 steps to address some of our findings from the July 10th
5 report. Number two, an update on DOC's consultation with our
6 office. Number three, an update on in-custody deaths, and
7 number four, a summary of the meet/confer process.

8 Let me first comment on DOC's efforts and actions to
9 address our findings related to the safety and welfare of both
10 detainees and staff. As has been the pattern of compliance
11 with the terms of the Court's orders throughout the eight-year
12 history of the remedial phase of this case, DOC typically steps
13 up compliance efforts in response to the monitor's reports.
14 There's often a flurry of activity to comply. Some concrete
15 steps are initiated in select areas that suggest progress.
16 Then there are some areas where the response constituted a
17 little more than window dressing.

18 Let me give you two examples of these different
19 approaches to compliance. We set out serious concerns about
20 the DOC's practice of not consistently locking in detainees
21 during the night hours, and cited several instances of harm
22 that ensued when the detainees were allowed to congregate after
23 lock-in. We strongly signaled that consistent enforcement of
24 lock-in was critical and essential for the safety of the
25 population. The DC, deputy commissioner -- I'm sorry -- for

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1 classification has moved quickly with a plan to address this
2 issue that would be put into place in the coming weeks. Such a
3 plan, if, and I emphasize if, it is successfully implemented
4 stands to reduce harm. That is a positive response.

5 However, the DOC response to a number of other
6 deficient basic security practices that were highlighted as
7 problematic was to simply issue a teletype to remind staff to
8 "follow department policy and procedures." That, in my view,
9 is a wholly inadequate response that is nothing more than a
10 facile window dressing. That kind of response does not signal
11 a true commitment to progress.

12 And I want to comment at this point in the city and
13 DOC's letter to the Court from yesterday, an eight-page
14 document, setting out initiatives, progress, et cetera. And I
15 certainly don't begrudge defendants counting their purported
16 successes. But what stood out in that letter to both the
17 deputy monitor and I was there was not one mention or reference
18 to correcting these flawed, pervasive security deficiencies in
19 that eight-page letter, which, in my view, is the most urgent
20 compliance issue in this case because it relates directly to
21 harm and protection from harm.

22 And while DOC undoubtedly has been engaged in a flurry
23 of activity since the July 10th hearing, the reality is that
24 serious incidents of harm related to security failures and
25 malpractice continue. The deputy monitor will detail here

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1 momentarily that it continues right up to yesterday during site
2 visits we made to two separate facilities, real abject harm.

3 For example, on August 1st, a major disturbance
4 occurred at GRVC in which some 16 detainees from two separate
5 housing units were allowed to engage in assaults on one another
6 with makeshift weapons because staff failed to secure doors.
7 Two inmates penetrated a control station and opened doors.
8 Number two, on July 29th, also at GRVC, a detainee was
9 brutally assaulted in his cell by approximately six detainees
10 while an officer stood and watched, making no effort whatsoever
11 to intervene. The victim sustained a fractured nose, injury to
12 the eye orbit, a concussion and other head injuries.

13 Number three, during the month of July, there were
14 eight slashings and stabbings in the enhanced housing unit at
15 Rose M. Singer, units that are supposed to be richly staffed
16 not only with security staff but program staff. It is one of
17 the most high-security units in the facility with eight
18 stabbings and slashings in July. We were there yesterday.
19 Those are now spilling over into August with continued
20 slashings and stabbings that are quite disturbing in what
21 generated them, which the deputy monitor may or may not go into
22 in detail, but we have it if the Court is interested.

23 Number four, three of the four in-custody deaths as of
24 July and August involved security staff-related deficiencies.
25 Unfortunately, incidents of violence and harm inevitably occur

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1 in large confinement settings even when there's sound
2 correctional practices in place. However, when ongoing failure
3 to comply with court-ordered remediation is coupled with
4 pervasive, unsound correctional practice and violence and harm
5 are allowed to flourish, in my view, a constitutional line is
6 crossed.

7 I wrote some years ago about institutional reform and
8 noted that effective intervention depends in large measure on
9 the ability of those involved to translate broad constitutional
10 principles into specific normative mandates which are viewed as
11 legitimate in the distinct day-to-day context of prison life.
12 Perceptions of legitimacy by staff and prison leaders alike
13 greatly influence whether these principles become patterns of
14 action. Perceptions of legitimacy and the bureaucratic will to
15 change are closely intertwined.

16 This is very much true of the implementation problems
17 in this case. The dysfunction we observe in the DOC can be
18 attributed to a variety of dynamics, but clearly, bureaucratic
19 will or the lack thereof in perceptions of legitimacy play no
20 small part in our ability to identify and implement a
21 comprehensive scheme to achieve institutional reform by the
22 DOC. The bureaucratic will of legitimacy must start with the
23 following edicts: (1) if the detainee population is secure at
24 night and not permitted to roam about, it will reduce harm; (2)
25 if officers remain on post and in position to intervene in

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1 detainee conflicts and actually do so, it will reduce harm. If
2 officers secure doors, cell doors, housing unit doors and
3 control station doors, it will reduce harm.

4 I could go down, but the short version is simply this:
5 Safety of a detainee population starts with sound security
6 practices. In fact, the American Correctional Association
7 Standards for Detention Facilities for the Security Performance
8 Standard cites "protection from harm" as the primary governing
9 objective for sound security practices. Unless and until the
10 New York Department of Corrections embraces and implements this
11 most basic corrections management tenet, harm will continue to
12 flourish. Unless and until DOC from the frontline officer to
13 the commissioner abide by these most elementary of standards,
14 harm will continue to flourish. Needless to say, harm must be
15 seen as a scourge by every single actor who operates under
16 color of law. Sound correctional standards demand it, as does
17 the rule of law. Diminishing import of this fundamental tenet
18 by whatever means merely undermines the process and ensures
19 that a harmful and unconstitutional status quo remains.

20 It is, of course, my fervent hope that the parties in
21 this honorable court can devise a path forward that materially
22 reduces the violence and harm that is occurring daily at the
23 New York City Department of Corrections such that these
24 circumstances become the exception rather than the norm; the
25 infrequent rather than the pervasive, so the detainees and

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1 staff have a reasonable expectation of safety in these
2 institutions.

3 Thank you, your Honor. Do you have any questions on
4 that?

5 THE COURT: No, thank you, Mr. Martin. Would the
6 deputy monitor wish to speak?

7 MS. FRIEDBERG: Good afternoon, your Honor. My name
8 is Anna Friedberg. I'm the deputy monitor. I'll be addressing
9 three issues at this portion of the conference. First, I
10 intend to provide some additional context and information
11 regarding the city's submission to the Court yesterday.
12 Second, we'd like to share information regarding our initial
13 assessment of the declaration provided by Dr. James Austin, and
14 third, I plan to provide a summary of three days at Rikers over
15 the last week based on the DOC's own reporting and personal
16 observations by the monitoring team.

17 I will take each in turn now. First, with respect to
18 the city's August 9th, 2023, submission to the Court, the
19 overall context to that communication raised the question:
20 What has changed since April 2023? It must be emphasized that
21 the monitor's April 2023 reports made a number of
22 recommendations given the significant concerns we had about
23 harm in the jails. During our April court conference, we
24 talked about whether there needed to be a court order to
25 address those recommendations. At the time, I advised the

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1 Court that the monitoring team didn't believe one was
2 necessary. But as our July 10th and August 7th reports
3 demonstrate, the department has not made the progress we had
4 hoped in the April conference.

5 In particular, I highlight the first recommendation of
6 the monitor's April 2023 recommendations related to security
7 practices. They have been the seminal recommendations from the
8 monitoring team for years. And as we outlined in the
9 July 10th and August 7th report, we have real concerns
10 about whether there are any viable plans to addressing these
11 problems. The city's letter from yesterday didn't even include
12 this topic. The city has asked what has changed since April?
13 That is exactly the problem. Nothing has changed since April.
14 I'm going to take a few of their comments with respect to the
15 letter from here.

16 First, the city provided a significant amount of data
17 in their letter. The monitoring team has not had a chance to
18 evaluate that data to see if we agree with the conclusions or
19 not. So I'm just advising the Court that we intend to do so.
20 As part of the data presented in the city's letter, there was a
21 table included from Dr. Austin that includes data that we find
22 hard to interpret as well as it includes data that we have
23 never seen before. We intend to examine that more closely as
24 well. The city's letter also addresses what they refer to as
25 RESH. That's the enhanced supervised housing unit at the Rose

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1 M. Singer Center and the moves to the OBCC. I will take each
2 in turn.

3 We are closely reviewing the RESH program. As you
4 know, under the action plan, the monitoring team is ultimately
5 required to approve it. That approval has not yet been
6 provided. We note that effectiveness simply cannot be
7 determined until the program has been implemented according to
8 design, and we have significant concerns about what has
9 occurred to date both from our work throughout the last few
10 months and up to and including our observations yesterday.

11 As Mr. Martin noted, there were eight stabbings and
12 slashings at RESH in July. That's more than any other facility
13 and particularly concerning that weapons are present in the
14 most high-security self-contained setting in the jails. The
15 monitoring team toured yesterday and identified problems with
16 safety such that individuals were not permitted to lock-out.
17 We heard that -- we also heard about concerning security
18 breaches such as individuals escaping from their cells and
19 attacking other individuals who were restrained to a desk. We
20 also saw an individual following a concerning use of force
21 after a stabbing and slashing that occurred on Tuesday.
22 Finally, we observed active drug use while we were on the unit;
23 again, in the highest-security unit that has no contact visits.
24 But for the monitoring team alerting staff to the individual
25 using drugs and our concern about that individual's well-being,

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1 the issue would not have been identified. When staff were
2 alerted, they essentially reported to the monitoring team that
3 individuals use drugs all the time, and in fact, the department
4 has a fentanyl problem. I do not know the status of that
5 particular individual at this time.

6 With respect to OBCC, they are currently on track to
7 have 220 uses of force this month. That reflects perhaps
8 one-third to a half of the use of force incidents that
9 generally occur monthly in the department. The facility has
10 had four stabbings and slashings, one a day for the past four
11 days. As the monitoring team has noted before, it's true that
12 issues inevitably occur as individuals are moved en masse to a
13 new facility. It was reported to us yesterday that OBCC is now
14 trying to address rules and procedures that had not properly
15 been employed at the facilities where these individuals had
16 previously come from, the majority of which came from AMKC,
17 which is leading to serious problems.

18 For example, we were advised that at OBCC, individuals
19 are now being blended so that there's not one particular gang
20 affiliation per housing unit. That apparently was not
21 occurring at AMKC, where many of these individuals came from,
22 and hence, interpersonal violence has resulted. I will note
23 that one of our visits yesterday at OBCC was at the intake.
24 During our visit, we met with a victim from a stabbing and
25 slashing who had been in the intake for a prolonged period of

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1 time. According to the department, they provided some
2 information literally just a few minutes before this conference
3 suggesting that perhaps the individual had only been in there
4 for about 21 hours. The individual reported being there beyond
5 24 hours. We, obviously, need to look at that issue.

6 Second, four perpetrators who were involved in a
7 second and separate stabbing and slashing at OBCC were placed
8 in a pen in the back of the intake unit outside the line of
9 sight of intake staff. When the monitoring team went to meet
10 with them, they were actively smoking an illicit substance and
11 burning joints were on the floor. If not for the monitoring
12 team's intervention, intake staff would not have known of these
13 issues, nor would they have addressed them. I will also tell
14 you that visually these individuals were clearly suffering and
15 highly intoxicated, some of whom could not stand. Why were
16 these people not in staff's line of sight? How do they have
17 drugs if they got searched before coming into intake? Why
18 wouldn't anybody in intake notice that they were smoking? I do
19 not have answers to any of those questions.

20 I will address two other comments with the city's
21 letter first with respect to staff discipline. The monitoring
22 team has spent extensive time and energy related to the
23 department's efforts to improve its efforts of imposing
24 discipline over the years. The monitoring team agrees that DOC
25 has made progress in addressing the backlog, but for the city

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1 to suggest that they are committed to holding wrongdoers
2 accountable fails to address the monitoring team's findings,
3 that in 2022, they held fewer people accountable for misconduct
4 in that year than any other year in the consent judgment. The
5 department's regression in detecting wrongdoing in 2022 via its
6 investigation process means that the lower number of charges
7 that were brought in 2022, since the inception of the consent
8 judgment in 2016, such a reduction can only be attributed to a
9 regression in detecting misconduct and the department's ability
10 to actually hold wrongdoers accountable.

11 The one final comment I will raise with respect to the
12 city's mission is with respect to their collaboration with the
13 monitoring team. The monitoring team does not dispute anything
14 in the city's letter, but we do direct the Court to our
15 commentary in our August 7th report. Concerns about
16 information is not just simply about the volume of information
17 provided, but it is also about the quality of the information
18 provided to the monitoring team and what we are able to access
19 reliably and timely. The monitoring team has exerted more
20 effort, time and resources to obtain information from the
21 department than ever before. That continues until today.
22 Responses have to be checked and double-checked. Even
23 something as simple as getting a list of active policies for
24 one particular unit has required multiple back-and-forths just
25 this week.

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1 Further, whether the department is committed to full
2 transparency and appreciates the gravity of these issues is
3 still an open question. Certain actions continue to raise
4 questions, and the city's submission is entirely silent on
5 what, if anything, it plans to do to ensure full transparency.
6 As I will discuss later, or in a few moments, we still have
7 questions regarding the department's efforts to shape public
8 perception of the serious issues in the jails over the last few
9 days.

10 I will now move to Dr. Austin's declaration. We have
11 completed an initial review of Dr. Austin's declaration that
12 may not be consistent with the information available to the
13 monitoring team. First, we note that Dr. Austin makes some
14 conclusions about classification in paragraph 8a of his
15 declaration. He also makes conclusions regarding the
16 effectiveness of the ESH unit at GRVC and RMSC in paragraph 8b.
17 And finally, he makes some conclusions regarding housing people
18 by gang affiliation in paragraph 8f. All three of those
19 conclusions are under evaluation by the monitoring team so that
20 we can understand how we arrived to those conclusions. We have
21 already made some requests and inquiries to get further
22 information and that review is ongoing. There were certain
23 facts or information shared in the declaration that we wish to
24 highlight because they are either not consistent with the
25 information available to the monitoring team or do not appear

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1 to be accurate.

2 First, with respect to paragraph 8e, AMKC has been
3 closed, but our understanding is that individuals have been
4 transferred from AMKC to multiple facilities, not just to OBCC
5 as stated in Dr. Austin's declaration. With respect to
6 Dr. Austin's update regarding the management of individuals
7 that may have qualified for placement in ESH but were not due
8 to mental health description, the description in paragraph 10
9 is not congruent with the monitoring team's perspective of
10 where we are with that issue. The monitoring team has had
11 initial discussions with DOC officials and Dr. Austin to better
12 understand who may require additional services and what
13 services they may need. This includes exploring the potential
14 development of a new housing unit or maybe repurposing housing
15 units already in existence.

16 The monitoring team believes it's premature to suggest
17 a new housing unit, such as a behavioral housing unit to be
18 created, or the elimination of CAPS is to occur. More
19 information is necessary and a discussion among the monitoring
20 team, DOC leadership, Dr. Austin and CHS is needed. We have
21 initiated the fact that a meeting, at least one initial
22 meeting, needs to occur. The monitoring team has attempted to
23 schedule this meeting, in fact, on August 15th, as noted in
24 Dr. Austin's declaration; however, we were advised this
25 department is not available for such a meeting on

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1 August 15th. So we know that despite the claim in the
2 declaration that a meeting will occur August 15th, it will
3 not. We hope to have something scheduled soon, but currently
4 there's no meeting scheduled and the monitoring team's request
5 to have it scheduled is outstanding.

6 Finally, we note that Dr. Austin appears to take a
7 position on behalf of the monitor in the first sentence of
8 paragraph 11 of his declaration, which reads, "The monitor
9 agrees that DOC has made substantial progress in some areas
10 since the action plan was adopted." As an initial matter,
11 Dr. Austin is not in a position to speak on behalf of the
12 monitor, nor is he a member of the monitoring team. He is a
13 consultant for DOC. The monitor speaks through his reports or
14 testimony before this Court. Most importantly, this statement
15 is not true. In the monitor's July 10th, 2023, report on
16 page 173, I will quote, "The monitor's assessment is that the
17 city and department have not made substantial and demonstrative
18 progress in implementing the reforms, initiative, plans,
19 systems and practices outlined in the action plan."

20 With respect to the items that I have laid out here,
21 we seek the Court's guidance if you will require further
22 information from the monitoring team regarding these matters.

23 THE COURT: I would appreciate a filed communication
24 that corrects the record on anything the monitoring team
25 believes materially needs correction.

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1 MS. FRIEDBERG: Thank you, your Honor.

2 Third, I'd like to share a synopsis of three days over
3 the last week at Rikers Island to provide the Court and the
4 parties with a better understanding and context of what is
5 occurring in the jails each and every day.

6 The monitoring team shares the Court's concerns
7 articulated by your Honor at the June 13th conference in
8 which you noted concern "by the way in which the leadership has
9 approached seeking to shape public opinion and public
10 perception of these very serious issues that have been raised
11 by the monitor." Over the last few days, the department has
12 facilitated a number of tours with various public officials
13 apparently showing various physical plant improvement, such as
14 new paint on cell doors and various program options, and
15 provide the press briefings and photographs as well as social
16 media content. The monitoring team doesn't dispute these
17 physical changes, but they can't be viewed in a vacuum as the
18 department appears it wants to do.

19 To that end, I share a summary of these three days.
20 I'm going to start with August 3rd and then August 8th and then
21 August 9th. With respect to August 3rd, I plan to share with
22 the Court a summary of the department's rapid reviews of the
23 use of force that occurred that day. As a reminder, rapid
24 reviews are completed at each facility by the facility
25 leadership as an initial assessment and summary of these

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1 incidents. On August 3rd, 2023, 25 uses of force incidents
2 received a rapid review and involved 93 staff. As a reminder,
3 these are initial assessments, and further, the monitoring team
4 is working with the department to enhance and improve the
5 findings in those rapid reviews. To date, we have found that
6 while they are helpful, they are not fully reliable.

7 With that said, we will note just a few highlights.
8 First, the department itself determined that six out of those
9 25 uses of force were avoidable. That means, they didn't have
10 to happen. Almost one out of four on that given day did not
11 need to occur. The reasons being: Staff failing to secure a
12 gate, failure to have situational awareness, proper securing of
13 individuals in custody and failure to secure food slots. I
14 won't go into all of them, but I will note the department
15 recommended suspension for four staff on that day, command
16 disciplines for five staff, corrective interviews for three
17 staff, as well as counseling for four staff. Given our
18 discussions about ESH at Rose M. Singer, I will also note that
19 three of the incidents on that day occurred in that unit. Two
20 of those three were considered avoidable.

21 I will now move to Tuesday, August 8th. On this day,
22 we note that the department initiated a large tour of
23 individuals to identify progress on that date. There has been
24 significant media attention related to the findings on those
25 dates. We took the department's own reporting through the

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1 central operations desk to identify what occurred or what they
2 reported occurred on that day. Sixty-seven incidents occurred
3 on that day. I'm going to outline them now. I will note that
4 the numbers do not exactly add up to 67 because some incidents
5 might need to be counted twice. For instance, an incident
6 could have a fire and a use of force.

7 So I will walk you through those 67 now. There were
8 29 instances of use of force. There were four stabbings and
9 slashings. There were 12 inmate-on-inmate fights, seven
10 incidents of fires, two incidents of serious injury that would
11 not otherwise be qualified in the incidents I have just
12 described. There were ten incidents in which individuals
13 engaged in or expressed an intent to engage in self-harm.
14 Narcan was administered to two individuals. There were
15 multiple emergency lock-ins. There were also two allegations
16 related to staff assault and sexual abuse misconduct. On that
17 day, there were also nine assaults on staff, six reportedly
18 because staff were splashed with liquids, two in which
19 incarcerated individuals pushed an officer, and one in which an
20 individual reportedly bit and kicked an officer.

21 On that day, the department also recovered a
22 significant amount of contraband. I will just list this to
23 give you a sense of the types of items identified. Over
24 9 grams of cocaine, 1.9 grams of fentanyl, 21 grams of
25 marijuana, 20 Suboxone strips, 17 pills of Prozac, 18 pills of

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1 Ambien, mail soaked in fentanyl, mail soaked in cocaine,
2 Newport cigarettes, 15 sharp objects and two iPhones. I
3 reiterate, this was only one day at Rikers Island. In
4 particular, I will note with respect to RNDC, which is where
5 one of the tours occurred, one stabbing occurred there, three
6 fires and multiple uses of force. As I mentioned earlier,
7 OBCC, that was also a location of one of those tours, had a
8 significant number of uses of force as well as a stabbing and
9 slashing that day as well.

10 Finally, with respect to August 9th, the monitoring
11 team personally toured the jails. I will note that generally
12 the monitoring team's practice is that when we go to tour the
13 jails, we make announced visits. We do not do them by
14 surprise, and, in fact, we invited representatives of the
15 department to join us as well as lawyers from the city's law
16 department. At this point, they may as well see what we see.
17 It was quite unfortunate. It was one of the most disturbing
18 tours that we have had since we've been on site. We toured
19 both the ESH unit at Rose M. Singer and then we went to OBCC.

20 I'll walk you through the day very quickly. We
21 started at the intake at the Rose M. Singer for ESH. When we
22 got there, we do some typical type of situations, such as
23 making sure that, for instance, how many individuals are in the
24 intake and are they being tracked appropriately. We were
25 advised there were two individuals in the intake, but they had

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1 not yet been entered into the tracking system because they had
2 just arrived. When we actually went back into the intake,
3 there were, in fact, three individuals in the intake, not two,
4 all of whom claimed that they had been in the intake for
5 multiple hours. We then went to visit to tour multiple units
6 of the ESH units, levels one and two, of which you heard some
7 of my remarks earlier, in which we identified an individual
8 actively engaging in the use of narcotics or what appeared to
9 be narcotics in particular based on their response. We met
10 with multiple individuals who described their experiences with
11 respect to violent incidents. The monitor met with an
12 individual who was the victim of a stabbing and slashing and
13 then a very painful -- followed by a very painful use of force.

14 I will move on. Those are high-level issues. I will
15 note that many of the individuals that we met with -- I will
16 note the final component is that despite the need for high
17 levels of staffing in the RESH units, that is not occurring.
18 Staff and incarcerated individuals confirmed that essentially
19 there is minimal staffing that precludes the lockout even at
20 the more limited periods of time, and that there's certain
21 individuals locked in for significant periods of time due to
22 staffing issues. That's both from staff reports, reports of
23 incarcerated individuals and within the department's own
24 tracking of log books.

25 We then went and toured OBCC, which is now the, quote,

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1 unquote, department's newest facility. During that tour, we
2 were able to speak with staff and leadership regarding the
3 incidents that are occurring as we noted at the beginning.
4 OBCC, right now, has already had 64 uses of force this month,
5 on track for over 220 uses of force. During our time on the --
6 at the facility, we had the opportunity to meet with one
7 individual who had been a victim of a stabbing and a slashing.
8 He was in intake for at least over 20 hours. We also met, at
9 the intake, the purported perpetrators of a stabbing and
10 slashing that had occurred a few hours before we were there.

11 As I noted during our time at that intake, the
12 monitoring team identified those individuals to be under the
13 influence of some type of substance. There was burning joints
14 on the ground. As you know, your Honor, I'm nine months
15 pregnant, so once it was identified, I had to vacate the area.
16 We did ask the staff to address that issue. Those individuals
17 were not in the line of sight of the staff, nor was it clear
18 that it would have been addressed but for the monitoring team's
19 identifying the issue.

20 THE COURT: Were all of those individuals in the same
21 area?

22 MS. FRIEDBERG: They were four individuals in the pen.
23 They appeared to be perhaps sharing narcotics together. A few
24 of them appeared to almost not be able to stand once we
25 arrived. They all appeared in various levels, for lack of a

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1 better word, of distress. They were unable to communicate
2 clearly. They were unable to move themselves in a way that
3 appeared normal and appeared to be heavily intoxicated.

4 THE COURT: And all of these people were suspected to
5 have been involved jointly in the stabbing/slashing incident?

6 MS. FRIEDBERG: Correct. All four of them were
7 suspected as perpetrators of a stabbing and slashing a few
8 hours before.

9 With that, your Honor, I'm going to conclude my
10 remarks and close with: We simply cannot proceed with the way
11 we are going now. Something can and must change. The dynamic
12 has to be different, and we look forward to supporting the
13 Court and the parties to develop those initiatives.

14 THE COURT: Thank you, Ms. Friedberg.

15 I now call on the defendants. I have the opportunity
16 to make inquiries. I think there are so many that I could make
17 that it would not be the most productive use of our time right
18 now, but should you wish to make any statement or statements
19 now before we go on to talk about the meet-and-confer process
20 and the proposed order, I would welcome that.

21 MR. SCHEMITSCH: John Schemitsch, your Honor. The
22 commissioner is prepared to make a statement.

23 THE COURT: Thank you Mr. Schemitsch.

24 Mr. Commissioner?

25 MR. MOLINA: Good morning, your Honor. Thank you for

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1 the opportunity to address this court. As Commissioner of the
2 New York City Department of Correction, I have a duty and
3 responsibility to the public and to the court to provide an
4 accurate, unfiltered and complete view of this administration's
5 progress in rebuilding the department. First, I would like to
6 share with the Court statistics of the department's progress
7 since what has been described by the monitor's reports as the
8 apex of the crisis, which this administration inherited on
9 January 1, 2022, approximately 19 months ago.

10 Slashings and stabbings have decreased more than
11 20 percent when comparing fiscal year '22 to fiscal year '23,
12 which just ended on June 30th, 2023. Moreover, we have seen
13 a more than 30 percent decrease of slashings and stabbings
14 department wide during calendar to date in 2023 when compared
15 to the same period in 2022. Despite a rising incarcerated
16 population, use of force comparing 2021 calendar year to
17 calendar year 2022 was down 14 percent. This is unprecedented
18 in comparison to the years prior to this administration, where
19 from 2016 to 2021, the incarcerated population decreased every
20 year but use of force incidents continued to increase. It
21 should be noted that calendar year to date as of July 30 of
22 2023, the department's Class A uses of force are down
23 60 percent and the department Class B uses of force are down
24 39.7 percent. These are uses of force that involve injury.

25 Assaults on staff without serious injury have

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1 decreased in fiscal year '23 by 38.9 percent, and assaults on
2 staff involving use of force have decreased in fiscal year '23
3 by 19.4 percent. We have dedicated significant resources to
4 resolving the new admission intake process, which was left to
5 flounder for years. Our efforts have resulted as of late in
6 successfully processing new admissions in less than 24 hours
7 99.5 percent of the time.

8 We have turned around core production, which was
9 previously a major departmental issue. Our core production
10 rate for the month of June 2023 was 98 percent, and we have
11 been hovering calendar year to date between 88 and 91 percent.
12 We have successfully induced our workforce to return to our
13 facilities by instilling accountability and increasing trust in
14 leadership. This is evidenced in our success by reducing
15 chronic staff absenteeism. In 2022, the average daily sick
16 call-out was 242 staff a day. In June of this year, the
17 average was 72. That is a 70 percent decrease in staff
18 absenteeism as it relates to sick. Accountability is being
19 enforced. More than 3,000 disciplinary cases have been
20 adjudicated since my administration took office. That includes
21 terminations, forced resignations and retirements of more than
22 300 employees and thousands of cases finally addressed.

23 This is a mere snapshot of where we've taken this
24 department in approximately 19 months. These metrics are just
25 a few of the reasons why I'm proud of the leadership team I

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1 have in place and the immense efforts they and the dedicated
2 correction officers have displayed over the past year and a
3 half. And this is why I think the monitor in his April 3rd
4 report stated, in sum and substance, that the department has
5 taken some important initial steps in building each area of the
6 foundational issues that were desperately needed and that the
7 impact on intermediate outcomes appears to be promising. The
8 monitor went on to state, and I quote, "The department has
9 developed insight into the nuances of the problems and has
10 crafted a logical, orderly plan for how to address them."

11 The correction industry as a whole has regrettably
12 faced issues in recent years with rising violence, use of force
13 and deaths in custody. And we are, in fact, below trends seen
14 elsewhere. In 2023, this year, the New York City Department of
15 Correction has experienced six in-custody deaths plus one
16 person who passed away shortly after being released, bringing
17 the total to seven. That is 36 percent fewer than the cohort
18 average of 11 of similar size jails in large American cities.
19 That means for approximately every two deaths in other systems,
20 there's one in the New York City Department of Corrections;
21 recognizing that one death is one death too many, but that is
22 also counting the recently released person, which to my
23 knowledge no other jurisdiction would even acknowledge.

24 Since 2016, the department has drastically improved
25 the footprint of facility-wide Genetec video recording. We use

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1 Genetec to identify and investigate violence and use of force.
2 The department has implemented body-worn and handheld cameras
3 increasing our ability to capture incidents by an order of
4 magnitude. Our use of force definitions have evolved and
5 improved over the past decade, so that we are significantly
6 more liberal in defining a use of force than most
7 jurisdictions. All of these enhancements are essential to
8 supporting our reform efforts and rising the threshold of
9 accountability both for people in custody and our staff who are
10 charged with their care.

11 THE COURT: May I just ask you one question,
12 Mr. Commissioner?

13 MR. MOLINA: Yes, ma'am.

14 THE COURT: In terms of the evolution and improvement
15 of the use of force definitions, I think you spoke of a
16 ten-year look-back, so that would include the 2015 consent
17 decree that defined use of force and set out dozens, if not
18 over 100 pages, of requirements for the department to meet; is
19 that correct?

20 MR. MOLINA: That is correct, your Honor.

21 THE COURT: Thank you.

22 MR. MOLINA: Comparing 2016 to 2023, I believe is
23 flawed. We have raised the level of transparency and expanded
24 our ability to closely manage our operation. We have greater
25 scrutiny of our operations, which is a good thing, and more

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1 transparent accounting of incidents. These reforms should not
2 be used against us to support the argument of contempt based on
3 a deeply, what I believe to be, flawed comparison of 2016. Of
4 equal importance, our population has evolved dramatically from
5 2016. As of July 20 of 2023, 27 percent of our detainees are
6 being held on homicide-related charges, 10.9 percent on serious
7 assault charges, 13.3 percent on robbery charges and 9.9 on
8 weapons charges. That is a total of 61 percent of the
9 department's current population. By comparison, on January 1,
10 2016, those held on homicide-related charges comprised of 9.7
11 percent of detainees, serious assault charges 8.5 percent,
12 robbery charges 11.9 percent, and weapons charges 6.3 percent
13 for a total of 36.4 percent of the department's 2016 population
14 at that time.

15 Simply put, since 2016, the concentration of
16 individuals that are capable of violent acts has dramatically
17 increased. Again, the comparison of 2016 to the present-day
18 violence metrics in our facilities is not instructive.
19 Respectfully, your Honor, the Adams administration has made
20 progress that has been made possible at a breakneck pace.
21 Things are not getting worse. The facts suggest the very
22 opposite. We are accelerating progress at an ever-increasing
23 clip. We have hired and retained dozens of experienced
24 corrections, government and business professionals at all
25 levels of leadership. Many of these leaders have come out of

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1 retirement, relocated to New York City and committed themselves
2 to our vision of relentless reform. The Adams administration
3 enlisted these outside professionals despite the years of being
4 advocated by many, including myself in 2017 when I was the
5 chief internal monitor.

6 My team, with the support of Mayor Adams, have taken
7 this department from the precipice of collapse, and for the
8 first time since the inception of the consent judgment, I
9 believe, put us on a pathway towards achieving reforms that are
10 sustainable. The word appreciation is constantly being used,
11 and there should be an appreciation of the decades of
12 mismanagement and disinvestment in the city's jail system with
13 the immense challenges were driven by four major issues; our
14 staffing crisis driven largely by significant staff
15 absenteeism, escalating violence, particularly slashings and
16 stabbings, rising use of force every year since 2016 to 2021,
17 despite the population of people in custody decreasing in all
18 of those years, as I have previously stated, and no
19 accountability.

20 The department had over 2,000 internal investigations,
21 the significant majority around use of force, which because of
22 mismanagement and poor leadership, the statute of limitations
23 expired, which meant holding persons accountable for not
24 meeting performance standards did not happen. And if that was
25 not bad enough, there were another 3,700 disciplinary cases

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1 that had not been addressed going back to calendar year 2017.
2 This level of disciplinary inaction built a muscle memory of
3 poor practices for thousands of uniformed staff.

4 As we look back to January 2022, the apex of this
5 manufactured crisis, the transformation of the New York City
6 Department of Corrections to date is substantial when you look
7 at it from that point of view. Many indicators of safety have
8 improved. Our collective progress is a story woven together by
9 our team's perseverance, the support from our community, and
10 the mayor's relentless pursuit of the long overdue
11 transformation of this agency. We are not just reforming the
12 department. With the Court's assistance, we have revitalized
13 the staff. We are attracting seasoned correction, government
14 and business professionals who bring expertise, empathy and
15 accountability to their roles.

16 But let me be clear: We have been, like I stated,
17 rebuilding this department and making unprecedented progress
18 since the apex of this crisis. There is no one more capable or
19 committed than the team of deeply experienced and talented
20 individuals that have been assembled with the mayor's support.
21 Our work is far from complete. We will continue to drive real
22 change, address every roadblock that we identify, and deliver a
23 safe environment for those in our care, those who work in our
24 facilities and the people of New York City.

25 No receiver will come into the New York City

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1 Department of Correction and induce greater reform at a faster
2 pace than what we have accomplished and continue to accomplish
3 every day. The historical record of past receiverships and
4 current receiverships, which have spanned four years to 18
5 years and still ongoing in other jurisdictions, have shown this
6 despite the significant cost to taxpayers.

7 (Continued on next page)

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1 MR. MOLINA: I recognize that the department has miles
2 to go to improve our correctional system. The incidents that
3 the monitor has highlighted reveal flawed correctional
4 practices that must be changed. At most, I have handed out
5 firm discipline to hold individuals accountable for the failure
6 to do their jobs properly. Changing culture and organizational
7 transformation does not happen overnight, but the statistics in
8 this case do not lie. Things are significantly better than the
9 apex of this crisis, and that is undeniable.

10 Your Honor, I have addressed this Court candidly and
11 honestly today. I declare before this Court that we are not
12 done, but we have demonstrated measurable irrefutable progress.
13 We are public servants who are committed to accelerating the
14 pace of reform, to benefit those in our care, those in our
15 service, and those in our community. We are welcome to work
16 with any party or entity who shares our mission.

17 Thank you.

18 THE COURT: Thank you, Mr. Commissioner.

19 Is there anything specific that you're in a position
20 to say about specific steps being taken on lock-ins or on
21 making sure that staff are on post? It's my understanding that
22 a number of these incidents occurred when staff were not where
23 they were supposed to be or inmates were -- incarcerated people
24 were not in their cells or had the ability to go in and out of
25 cells when they shouldn't have been.

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1 MR. MOLINA: Thank you, your Honor, for the question.

2 What I will say is that I agree with the monitor staff
3 not conducting their tours when they're supposed to, staff
4 taking it upon themselves to leave posts presents a situation
5 of harm. What I will say, we have been immediate in responding
6 to those issues with discipline, suspending where warranted,
7 and taking action, holding not only officers accountable, but
8 even their first-line supervisors and, to some degree,
9 sometimes their managers.

10 And I would just like to share with the Court that it
11 was not frequent that first-line supervisors or managers in the
12 past were held accountable, and we have been doing that. I am
13 obviously concerned when staff do not conduct tours or leave
14 their post and abandon their post. What I will say, while that
15 incident happening even just once is not acceptable to me, it
16 is happening significantly less frequent than when it happened
17 through the years of 2016 to 2021. And the deputy commissioner
18 of facility operations constantly is evolving his ability to be
19 able to observe and have oversight to make sure that these
20 things are not occurring. I myself too frequently, as well as
21 others, randomly review cameras. And when we notice
22 deficiencies, we order immediate action be taken place.

23 THE COURT: Thank you, Mr. Commissioner.

24 I will now turn to the second segment of our agenda,
25 which is commentary on the meet-and-confer process and the

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1 proposed court order on immediate initiatives that was provided
2 by the monitor in the August 7th report at Appendix C of the
3 August 7th report. And so I would ask that the monitor and
4 deputy monitor speak first.

5 MS. FREIDBERG: Your Honor, this is Anna Freidberg. I
6 am the deputy monitor.

7 As you know, the Court directed the parties to meet
8 and confer in advance of this conference today. The monitoring
9 team helped facilitate those discussions. As you may know,
10 that has been my role for almost a decade with this group. And
11 so we engaged in that practice again over the last month. We
12 had numerous meetings and phone calls as a collective group and
13 various different one-off meetings as necessary.

14 We discussed three issues. The first is the monitor's
15 proposed order related to Appendix C; second, we discussed some
16 issues related to discovery that is ongoing; and third, the
17 structure and timing of potential motion practice.

18 With respect to this agenda item, I will talk about
19 the proposed court order.

20 As we described in our July 10th report and our August
21 7th report, the monitoring team identified several critical
22 items that have continuously languished and that are necessary
23 to reduce the risk of harm. And the city and department have
24 not adequately moved forward through the consultation process
25 with the monitoring team. The monitoring team found these

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1 steps should be provided during the next few months as other
2 remedial relief is being contemplated.

3 It must be emphasized that this is a short-term
4 interim measure for the next few months to ensure proper focus
5 and pace for initiatives that have direct bearing on the
6 imminent risk of harm. The monitor finds that this group of
7 initiatives are necessary and narrowly tailored to address the
8 department's noncompliance with certain requirements of the
9 Nunez court orders, as described in both the July 10th and
10 August 7th report.

11 It is my understanding that the plaintiffs and the
12 S.D.N.Y. consent to the entry of the order as proposed by the
13 monitoring team in Appendix C of the August 7th report. The
14 report outlines two provisions in which the defendants take a
15 different position than the monitoring team. I'm going to just
16 direct the Court with respect to the monitor's position on
17 those two provisions to pages 21 through 25 of our court order
18 for our position on why the proposed order as drafted is
19 appropriate. Of course, should the Court have any questions,
20 I'd be happy to answer them.

21 THE COURT: Thank you.

22 Ms. Werlwash -- did you have any further remarks,
23 Ms. Freidberg, before I make my way to hearing from the
24 defendants?

25 MS. FREIDBERG: I do not, your Honor. Thank you.

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1 THE COURT: And so, Ms. Werlwash, do I correctly
2 understand that plaintiffs consent to the order as proposed?

3 MS. WERLWAS: Yes, your Honor, as proposed by the
4 monitor. We consent.

5 THE COURT: Thank you.

6 And the government?

7 MR. POWELL: We consent to the order as well. We have
8 no objection to it being entered, but do note for the record
9 that we view it as an insufficient remedy to address the
10 overall ongoing constitutional violations that are going on in
11 the jail system.

12 THE COURT: Yes. This is an order that concerns
13 short-term deadlines and short-term steps.

14 MR. POWELL: But as identified by the monitor, yes,
15 your Honor, we have no objection.

16 THE COURT: Thank you, Mr. Powell.

17 And so counsel for the city, I understand that you
18 have made a counterproposal to the last sentence of section 1,
19 paragraph 1, which is proposed by the monitor to read: Upon
20 request by the monitor, the department shall provide data
21 regarding use of force, security, and violence indicators, and
22 permit observation of meetings in which such information is
23 evaluated by department leadership.

24 Would you care to speak further to that objection?

25 MR. SCHEMITSCH: Yes, your Honor.

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1 As to provision 1, defendants are concerned as to the
2 broad and vague language of the monitor's proposal of access to
3 meetings in which such information, namely, regarding use of
4 force, security, and violence indicators is evaluated by
5 department leadership. Some of these meetings involve
6 conversations and discussions which, at times, are preliminary
7 and not ready for feedback from the monitor and may give an
8 inaccurate impression of the policies and practices that the
9 department is discussing to get a fulsome view of all options,
10 but which are not going to be put in place. Additionally, the
11 vague language would seem to cover spontaneous meetings, as
12 well as scheduled meetings.

13 In addition to the proposal that we annunciated in the
14 monitor's report --

15 THE COURT: And that proposal is to have a monthly
16 summary report to the monitor by the commissioner of meetings
17 in which the commissioner was involved; is that correct?

18 MR. SCHEMITSCH: Yes, it would be a proposed monthly
19 scheduled meeting between the commissioner and the monitor,
20 where the commissioner would brief the monitor on all meetings
21 the commissioner has been a part of relevant to use of force,
22 security, and violence indicators. In addition, being
23 available for additional meetings in the event that they are
24 required.

25 In addition to that, we now propose the department has

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1 a meeting that's called the Total Efficiency Accountability
2 Management System or TEAMS meeting. Those occur on an
3 approximately monthly basis in person, where department
4 leadership is present to evaluate use of force, security, and
5 violence indicators. Defendants are in agreement to permit the
6 monitor to observe these TEAMS meetings in order to encourage
7 transparency of the department's abilities to evaluate and
8 address data and metrics on use of force, security, and
9 violence indicators.

10 THE COURT: And so I will ask Ms. Freidberg whether
11 she is familiar with these TEAMS meetings, whether the proposed
12 changes are acceptable to the monitor, and also to give us a
13 little bit of color on how you would expect the language that
14 you have proposed to work. How would you find out what
15 meetings to observe? Is there a certain level of meeting or
16 type of gathering that would be anticipated by the use of the
17 word "meeting" in your proposal?

18 MS. FREIDBERG: With respect to the city's proposal,
19 the first I've heard of it is just right now. It's quite
20 disappointing, given the extensive negotiation we've had on
21 this. So I am familiar with the TEAMS meeting. Certainly we
22 welcome the invitation. Prior to this administration, every
23 other administration invited us to such meetings without the
24 need for court intervention. Certainly we welcome those --
25 that invitation.

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1 None of that changes the monitoring team's position
2 with respect to the provision in this particular requirement.
3 As noted in our response, the monitoring team's access to
4 information is critical; it is a broad access right to allow us
5 to conduct neutral and independent assessments.

6 For the reasons that we've already stated, we believe
7 that the language we propose is appropriate, and the monitoring
8 team's eight years of expertise in working with the department
9 makes clear that that would be conducted in a reasonable
10 manner. And we have never demonstrated anything other than a
11 reasonable approach to addressing our access to information;
12 but anything in which the department has the ability to control
13 the narrative or manipulate what information we may be able to
14 obtain gives us grave concern about transparency.

15 So while we thank the department for the ability to
16 observe the TEAMS meetings, which would certainly be applicable
17 under the proposed language, it does not alter in any way our
18 view that the language as described in the proposed order is
19 most appropriate.

20 THE COURT: And so operationally or in practice, you
21 would expect to be communicating with the department and
22 individuals at the department to identify gatherings that you
23 believe are appropriate for observation and to elicit
24 invitations to such gatherings or what?

25 MS. FREIDBERG: Correct.

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1 During our eight years of -- well, I should correct
2 that. During our seven years of monitoring prior to the
3 department's current position with respect to sharing of
4 information, there was a natural flow with respect to the ways
5 in which meetings occurred. It happened in a manner where we
6 would identify what types of routine meetings were occurring.
7 They've altered over the years. TEAMS meetings have occurred
8 monthly; they then stop. They change names. All those types
9 of things, there's going to be a dynamic flow.

10 But when there is good communication, we learn about
11 those meetings often as an initial starting point. We learn
12 about what are those meetings? What happens at them, right?
13 Depending on what those are, we then determine whether or not
14 it makes sense for us to attend.

15 The monitoring team has always asked to attend a
16 meeting in advance. The monitoring team has never
17 spontaneously attended a meeting. And quite frankly, if a
18 spontaneous meeting occurred, I'm not even sure how the
19 monitoring team would be in a position to attend. We don't
20 work on-site, right. I mean, the concern that there's some
21 spontaneous meeting that the monitoring team would just show up
22 at doesn't seem like a feasible concern, nor has there ever
23 been an opportunity -- I can't think of the eight years that
24 we've been monitoring, where the monitoring team shows up
25 unannounced and surprised. In fact, the benefit of the Nuñez

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1 manager is that it would facilitate an opportunity for us to
2 learn about what is occurring, what are the types of items that
3 may be addressed, and whether or not the monitoring team should
4 attend.

5 Until this very recent objection, it has never been an
6 issue. In fact, it's actually always been a very dynamic, easy
7 conversation. I think the monitoring team probably would
8 observe one to two, three meetings a month. It just sort of
9 depends. Sometimes one month you might review a few, then you
10 might not review any. It also is partly dependent on how the
11 department structures its meetings. It alters these meetings
12 so frequently that to the extent that we try to delineate one
13 type of meeting, next month the meeting could get a new name
14 and it doesn't occur anymore, which is why I have a concern
15 about including anything in this provision related to a
16 specific meeting by a specific name, because there is a
17 long-standing practice of the department to alter their types
18 of meetings. That's fine. I certainly have no problem with
19 the fact that they might need to alter meetings, but it
20 certainly would impede our ability if we started to go down the
21 road of identifying a specifically named meeting given their
22 practice of changing the way these meetings occur.

23 THE COURT: Thank you.

24 Mr. Schemitsch, anything further?

25 MR. SCHEMITSCH: Yes, your Honor.

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1 We're concerned about the broad and undefined language
2 in the order as the monitor proposes it. It could be the case
3 that defendants could be held in contempt if we, for instance,
4 did not invite the monitoring team to a spontaneous meeting
5 with the -- to spontaneous meetings with the language as it
6 stands presently.

7 MS. FREIDBERG: Your Honor, this is Anna Freidberg.

8 As I'll note, it says "upon request from the
9 monitoring team." There is no invitation request. I have no
10 idea. I engaged in various discussions with the department
11 related to their concerns. This last-minute effort here at
12 this conference to be raising concerns about spontaneous
13 meetings, one, it's just unfortunate that we're dealing with
14 this in front of you, when I offered myself to have these
15 conversations over the last month, over a significant period of
16 time.

17 But nonetheless, to the extent that the city has this
18 concern about spontaneous meetings, it says upon request. How
19 could they possibly be held in contempt? They are not being
20 asked to invite. We are going to request; we'll have to learn.

21 The monitoring team has worked with the department for
22 eight years and has demonstrated a reasonableness with respect
23 to access to information. This appears to be yet another
24 attempt for the department to evade transparency with the
25 monitoring team.

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1 THE COURT: And you will represent here on the record
2 that you do not intend to make a request that you be permitted
3 to observe all spontaneous meetings as a generic term.

4 MS. FREIDBERG: Correct, your Honor.

5 THE COURT: Thank you.

6 Mr. Schemitsch, anything further?

7 MR. SCHEMITSCH: No, nothing further, your Honor.

8 THE COURT: Thank you.

9 Going to the second issue that I understand is in
10 contention, Ms. Freidberg, would you please tell us succinctly
11 why it is that the monitoring team believes that the number 21
12 for supervisors in the ID division is a necessary floor at this
13 point, as set forth in one of the provisions here, section 1,
14 paragraph 11, ID staffing of the proposed order.

15 MS. FREIDBERG: The number 21 for supervisors, your
16 Honor, first was a number identified by the department's own
17 leadership within the ID division of what they needed. It
18 happens to also reflect essentially the same number of
19 supervisors that they had when their investigative numbers were
20 about 85, which is the number of investigators that the
21 department is currently planning to address. And so that's how
22 we achieved those -- that's how we obtained those numbers.

23 The department essentially right now is suggesting
24 that they maintain the status quo with respect to
25 investigators -- supervisors, I'm sorry; perhaps, at most,

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1 adding one or two, while adding over 20 investigators.

2 Certainly efficiency with respect to supervision is incredibly
3 important.

4 That said, there is also a numbers game here. It
5 remains unclear to the department -- I mean, unclear to the
6 monitoring team why this number is so contentious. In
7 particular, I will note that the department just recently
8 appointed a third leader to the ID division that has now been
9 cut in half from where it used to be. And so it's incredibly
10 difficult for the monitoring team to understand how the
11 department takes one position that the ID division for use of
12 force requires additional high-level supervision; and yet at
13 the lower levels with high numbers of use of force incidents
14 and high levels of investigators, it doesn't need a similar
15 sort of ratio of supervisors to investigators.

16 For whatever reason, despite the fact that the
17 monitoring team raised this issue of staffing for over four
18 months, both directly with the city and the department, about a
19 week or two prior to this court order they now claim that they
20 have to conduct yet another staffing analysis, and that for the
21 first time, they believe there's issues with respect to
22 efficiency of supervision, none of which has been raised in the
23 monitoring team's long-standing discussions with ID, nor who's
24 going to conduct such an assessment, what expertise they have,
25 or why it is necessary.

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1 THE COURT: Thank you.

2 Mr. Schemitsch?

3 MR. SCHEMITSCH: Defendants are in agreement with the
4 proposal, except as it pertains to the increase in the number
5 of supervisors. We are concerned that the proposal requiring
6 the increase to staffing 21 supervisors would occur before the
7 department's completion of an ongoing staffing analysis on the
8 adequacy of supervision, which is being undertaken at present
9 by the Office of Management Planning and Analysis, OMAP.

10 The adequacy of supervision is not necessarily tied to
11 the number of supervisors, but may instead be tied to how
12 supervision is allocated. To that end, the defendants'
13 proposal was that the department increase the number of
14 supervisors to arrange between 16 and 21 until the completion
15 of a comprehensive review and restructuring so that supervision
16 is tiered appropriately for review and escalation.

17 THE COURT: Need you to recognize that the proposal
18 for 21 contemplates a scenario in which the department could
19 present an internal staffing analysis and demonstrate to the
20 monitor that fewer staff are necessary to conduct timely and
21 objective investigations of all use of force incidents as
22 required; and so this is -- this proposal is not asking me to
23 write 21 into stone in all circumstances.

24 Does the department believe that that is an
25 insufficient protection of its ability to work toward

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1 efficiencies?

2 MR. SCHEMITSCH: We believe that it would be more
3 practical and efficient for the department to finish their
4 review and then be able to make that determination.

5 THE COURT: And when was this review begun?

6 MR. MOLINA: Your Honor, the Office of Management
7 Analysis -- Louis Molina, Commissioner for New York City DOC.

8 The Office of Management Analysis and Planning just
9 finalized the model that it will use to conduct this analysis.
10 And we anticipate that in the early part of November, that
11 analysis will be complete.

12 If I can just talk about the range. I think the range
13 16 to 21 is fair; so that if we hire 21, and let's say we
14 needed 17, what do I do with the additional staff members that
15 are there that we have hired to employ? Our ratio would allow
16 us to have one to four investigators. In most best practices
17 of investigative units, the ratio of supervisor to investigator
18 is one in eight. I'm not proposing that we go to one in eight,
19 but I would just like for us to be able to be within the range
20 of 16 to 21, so that we don't find ourselves in a situation
21 where if we don't achieve 21 for a number of reasons, that the
22 Court would be finding us in violation in some way.

23 MS. FREIDBERG: Your Honor, I will raise just a couple
24 things.

25 One, with respect to the city's position, I don't have

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1 any way to verify whether or not the model for the staffing
2 analysis has occurred or not. It's quite disappointing, as you
3 know, the issue with respect to ID staffing has been raised in
4 April 2023. Now here we are in August, and purportedly it's
5 been completed. I will be asking the department to verify --

6 THE COURT: It's been started.

7 MS. FREIDBERG: The model has been created.

8 We will be asking tomorrow for that model and the
9 specific dates. Given our concerns about the department's
10 representations, we will need that specific information.

11 Nonetheless, taking them at their word for this
12 particular conference, nothing with respect to what the
13 department described would be precluded from this particular
14 order that would require 21 supervisors by November 30, 2023.
15 Pursuant to the commissioner's representation that such a
16 staffing analysis will be done by November, the early part of
17 November, should such analysis be done, they would not be held
18 in contempt of the Court because they could provide a staffing
19 analysis to the monitoring team in which the number could be
20 reduced.

21 I will raise, I'm not sure what expertise OMAP has
22 with respect to the conducting of use of force investigations;
23 that's something we will need to evaluate as part of the
24 reasonableness of any staffing analysis. Again, as I noted,
25 it's quite unfortunate that we're at this stage of the

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1 conversation where we're getting information at a court
2 conference, despite repeated requests for this information over
3 the last few months to learn about it.

4 Nonetheless I don't see why what the department is
5 describing they are going to do right now could not occur under
6 the language proposed by the monitor. The language proposed by
7 the department includes no deadlines, no dates, and essentially
8 says they can conduct a staffing analysis, they will keep us
9 posted as to when that will be done.

10 We're already there. That's what we were doing from
11 April 2023 till now. And but for this conference today, I'm
12 pretty sure we would not be hearing anything with respect to a
13 staffing analysis or when it's been conducted. So I leave it
14 to the -- we would propose that the language as described as
15 appropriate, and to the extent that the department has raised
16 any viable concerns, they would be addressed with the language
17 as written by the monitoring team.

18 THE COURT: Thank you.

19 Anything further, Mr. Commissioner or Mr. Schemitsch?

20 MR. SCHEMITSCH: John Schemitsch, your Honor.

21 We would agree to the increase to 21 if the date
22 proposed was moved from November 30 to December 31st, 2023, so
23 the department has an opportunity to complete concurrently its
24 analysis.

25 THE COURT: Ms. Freidberg.

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1 MS. FREIDBERG: Well, I would much prefer November
2 30th. I'm not going to have a fight here over a month; so
3 we'll agree to December 31st. We will note that we'll be
4 making a request for the department to provide us the model and
5 the dates upon which the staffing analysis occurred to be
6 produced to us by tomorrow.

7 THE COURT: Will the department produce that
8 information by tomorrow?

9 MR. SCHEMITSCH: We can produce the model tomorrow,
10 your Honor.

11 THE COURT: Thank you.

12 So based on those representations and that agreement,
13 unless the plaintiffs or the government wish to be heard on the
14 one month change of dates, I will accept that amendment.

15 So paragraph 1, section 11 is amended to make the
16 staffing deadline December 31 of 2023, rather than November
17 30th of 2023. As to the last sentence of paragraph 1, I am not
18 persuaded by the defendants' objection to the proposed
19 language; it is therefore overruled. I find that it is both
20 reasonable and necessary that the department be required to
21 permit the monitoring team to review the referenced meetings on
22 request; and that we do have a track record here of a
23 cooperative process of identifying appropriate meetings and
24 observing meetings. And I see no reason for that to be
25 narrowed or interrupted; it is necessary to have transparency

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1 here, and this will promote transparency.

2 So is the AT&T line still connected?

3 THE DEPUTY CLERK: It's muted. Sorry. It's good.

4 THE COURT: All right. It's working?

5 Okay. Very well.

6 And so the order as proposed with that one change is
7 approved and will be entered.

8 Now we turn to the briefing schedule for the proposal
9 of a motion for contempt or receivership. And so the proposal,
10 as I understand it by the plaintiffs and the government, is
11 that the opening brief be due November 17th, the opposition
12 brief due January 16th, and the -- of 2024, and the reply brief
13 due February 15th, 2024. And the report that has been filed
14 discusses the development, and I think we've had enough
15 discussions on parameters to have a general idea of what is in
16 mind.

17 Is there anything further, Ms. Werlwas, that the
18 plaintiff class wishes to say before I make the same invitation
19 to the government and hear anything that the city or
20 commissioner wish to offer?

21 MS. WERLWAS: Thank you, your Honor. Excuse me.
22 Pardon me. Mary Lynne Werlwas, for the plaintiff class.

23 We'll be brief, your Honor.

24 We think that the relevant facts are well laid out
25 before the Court and we don't need to recite any of those. We

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1 are happy to answer questions from your Honor about the nature
2 of the proposal for steps forward, but wanted to note a few
3 things.

4 The reason we have made the proposal that we have,
5 worked it out with the U.S. Attorney's Office, is that
6 regardless of the variation in the facts over the years, where
7 we stand today is that there remains a pattern and practice of
8 excessive force and violation of the plaintiffs' constitutional
9 rights this very day in the department. And we've been through
10 four commissioners, countless recommendations from the monitor
11 that have gone unheeded, several court conferences, several
12 judicial interventions in the form of new orders. And the
13 resources expended on this task, the tasks we've engaged in
14 today and in prior conferences, with so little gain to show for
15 it, are extraordinary. And the harm that our class is
16 suffering, from people with mental illness being taunted by
17 staff who hope for a suspension vacation, as reported in the
18 most recent report, to injuries in unguarded housing areas, to
19 deaths, is profound.

20 We have been most troubled recently that this remedial
21 scheme that we've been engaged in for eight years has been
22 premised enormously on the agency's openness to technical input
23 and recommendations from the monitor and the national
24 correctional experts on the monitoring team. It's a
25 monitorship, but in some ways New York City has benefited from

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1 enormous capacity building from the monitor.

2 But for far too long, report after report, the
3 recommendations have fallen to the ground. There have been
4 stolid plans for reform. There's no shortage of protocols, no
5 shortage of remedial plans in this case. What has lacked has
6 been implementation of those plans and basic supervision of
7 this workforce.

8 And as we have heard illustrated today, but have seen
9 for the last several years and years before, at its core, this
10 is an agency in which the staff and supervisors are permitted
11 to abdicate their basic correctional responsibilities with
12 impunity. And when it's tolerated that staff are off post when
13 they are supposed to be working, that supervisors fail to tour,
14 and that wardens cannot assess use of force objectively, then
15 no further policy revisions, not even a directive such as in
16 the order before us today, saying staff shall remain on post,
17 is going to fix that problem.

18 And most disturbingly, the agency does not give a
19 sense that it appreciates the magnitude of the harm it inflicts
20 on people in its custody and how remarkably deviant its
21 practices are. We see the commissioner reaching to declare
22 suspicious deaths and misconduct as justifiable, promoting to
23 management people who are demonstrably unfit, placing tactical
24 weaponry like submachine guns in the hands of the emergency
25 services unit, without responding to the monitor's reports that

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1 they have assigned to that unit, people with a propensity for
2 violence. It's this persistence of unnecessary and excessive
3 force through this day, and the city's inability to see and
4 remedy what is happening on its watch, and it's disturbingly
5 cavalier attitude towards truthfulness that has led us to where
6 we are today in which we have worked with the U.S. Attorney's
7 Office to craft a remedial path to break this quagmire.

8 To annotate one or two things about the process we've
9 proposed for moving forward, as you've seen, we think this is
10 the path that most suits this case, where the parties and the
11 Court are very familiar with the overwhelming corpus of facts
12 that would be relevant to contempt and remedial proceedings.
13 We will include in our papers proposed findings of fact,
14 something akin in style to a 56.1 statement, and the city will
15 have an opportunity to identify the facts with which it agrees
16 or it disputes and the evidentiary basis therefrom. And we
17 think that that --

18 THE COURT: And you will provide an evidentiary basis
19 for your opening --

20 MS. WERLWAS: Yes, we are -- yes, that has citations
21 to the record. It's no surprise here that overwhelmingly the
22 facts are drawn from the monitor's reports, but that they will
23 be all duly cited.

24 And we think that that will significantly narrow -- if
25 not entirely eliminate -- disputed facts. And so for that

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1 reason, we don't know at this juncture whether an evidentiary
2 hearing would be necessary. But it is our hope and our belief
3 that this process can eliminate much of the need for a hearing.

4 The proposed filing date of November 17th we will note
5 has come about because while we are ready to file more promptly
6 and we think that the urgency of our clients' needs with their
7 lives at stake demands an immediate response, we do understand
8 that the U.S. Government needs that as their filing date. And
9 we don't think piecemeal litigation or an asynchronous briefing
10 schedule is going to be at all efficient or protect people any
11 faster. And so for that reason, in our view, the most
12 efficient path to a resolution has been a joint filing date,
13 and so that the city can file a singular opposition.

14 But we are available to answer questions from your
15 Honor about how we see the path moving forward.

16 THE COURT: It appears a pretty clear path to me.

17 In terms of procedure, obviously, my approval of the
18 schedule in this proposal would be without prejudice, of
19 course, to the city's ability to oppose and raise issues with
20 respect to whether there are factual issues or the record. I
21 would hope and trust that to the greatest extent possible,
22 there would be open lines of communication to eliminate
23 disputes that can be resolved between the parties from being
24 brought before the Court. But otherwise, it's clear to me.

25 Thank you.

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1 MS. WERLWAS: Thank you.

2 THE COURT: Mr. Powell.

3 MR. POWELL: Jeffrey Powell, for the government.

4 Thank you, your Honor.

5 Just briefly, obviously the jail system has been in
6 crisis for many years. The pervasive system at dysfunction, in
7 effective practices and procedures, and culture of violence
8 clearly continue to persist, and they have deep roots that go
9 back over the terms of many administrations and many department
10 commissioners.

11 Simply put, the government just can't wait any longer
12 for conditions to substantially improve, and that's why we have
13 decided to seek the appointment of a receiver. We want to make
14 clear that the government does not make the decision to seek
15 the appointment of a receiver lightly. However, in light of
16 the current levels of violence and disorder in the jails –
17 which cannot be disputed – the frequency with which staff are
18 utilizing unnecessary and excessive force, which is exactly
19 what this consent judgment was intended to prevent, the daily
20 risk of harm to incarcerated people and department staff
21 members and the many years of ongoing noncompliance with the
22 court-ordered relief that preceded this administration and
23 continues, we simply think that we must seek this form of
24 extraordinary relief in the form of a court-appointed receiver.

25 More well-thought-out sound recommendations from the

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1 monitor or additional directives from this Court in the form of
2 orders for the department to implement remedial steps to make
3 sure they are safe, staff do basic things like stay on post, is
4 just not going to be sufficient in our view. Simply put, the
5 department is not fulfilling its core obligation to follow
6 basic security protocols, ensure the safety of people in
7 custody, and protect them and department staff from harm. This
8 was only further made clear today by the account that the
9 monitor gave of his recent visit to the two facilities in the
10 last -- yesterday.

11 Every safety and violence indicator is substantially
12 higher than it was when this consent judgment was entered. At
13 that time there were unconstitutional conditions. To the
14 extent the city argues that that is not the appropriate
15 comparison, we just note that the comparing data to the end of
16 2021, when the city was in the midst of a pandemic and up to a
17 third of the staff were not showing up for work, we don't think
18 that is the proper comparison either. Even according to the
19 city's own statistics, slashing and stabbings are on pace to be
20 over 300 this year. Use of force numbers are over 6,000 this
21 year. These numbers are just simply unheard of in any other
22 system.

23 As the monitor has noted, there are many instances --
24 the most concerning thing is there are many instances where the
25 department staff has basically ceded control of housing units

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1 to the incarcerated people that they are supposed to be
2 protecting. These individuals are left to freely enter and
3 exit cells, congregate in large groups, and all too often
4 engage in violent conduct that have resulted in severe
5 injuries. This continues unabated.

6 The department is failing to provide its line
7 correction officers with adequate support and supervision, and
8 staff continue to regularly abandon their post and don't
9 conduct required tours.

10 The monitor's report from July 10th of this year – and
11 this is recent data – as of May 2023, there were 671 total
12 unmanned posts. The department continues to engage in
13 excessive and unnecessary use of force on a regular basis, and
14 that's according to its own internal records and reviews.
15 These incidents can routinely be avoided and, again, that's
16 according to the department's own reviews.

17 The use of head strikes, which was, you may recall, a
18 major issue that led to this lawsuit and the consent judgment,
19 is at sky-high figures. The monitor reports that almost 400
20 times in 2022, staff used head strikes on people in custody.

21 I'm not going to belabor on any additional statistics
22 or description of the circumstances, which are obviously dire;
23 but the one other point I would add is that we did engage in
24 meet-and-confer sessions, multiple sessions with the city since
25 the issuance of the July 10th report. And we just feel like we

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1 have to say that, in our view, the city's response in what they
2 presented during those sessions were underwhelming, to say the
3 least. The city has failed thus far to offer any novel
4 strategies or fresh approaches to address the patently unsafe
5 conditions in the jails. Instead, we have heard more of the
6 same things that we have been hearing for the last several
7 years.

8 As the monitor mentioned, we heard about new teletypes
9 that will be read at roll calls to remind staff of their basic
10 jobs, including that they need to stay on post and avoid using
11 head strikes; plans to retrain staff again; plans to revise
12 policies and directives to address the very same deficiencies
13 that the monitor has reported during the last eight years and
14 has told your Honor about at multiple court conferences.

15 At this point, this is simply not enough. We expect
16 to hear -- we expected to hear about much more creative and
17 aggressive changes given the ongoing crisis in the jail system
18 and the harm being suffered. We simply did not.

19 And with respect to the motion schedule, I think all
20 parties consent to what has been proposed and the procedure
21 contemplated with respect to timing. We would just note -- I
22 think your Honor may be aware of this -- that the government and
23 class counsel have made requests for a variety of data and
24 information that we feel is very relevant to establishing
25 noncompliance with the various core provisions at issue. The

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1 monitor expects to provide much of this information to us next
2 month. That, combined with what we view are going to be
3 substantial motion papers and proposed findings of fact, as
4 well as the internal review process that the government will go
5 through before filing anything, is why we think and
6 collectively with the plaintiffs' counsel, propose November
7 17th as the deadline.

8 THE COURT: Thank you.

9 I think you were alluding to this a few minutes ago
10 and I'd forgotten to this call this out specifically with
11 Ms. Werlwash. There is also a September 11th joint letter
12 report date built into the schedule. And as I understand it,
13 that is connected with the data requests and the potential for
14 a dispute concerning the sufficiency of the response to the
15 data request; is that correct, Mr. Powell?

16 MR. POWELL: I think that's partly correct.

17 But as your Honor is aware, under the consent
18 judgment, we were required and did issue a notice of
19 noncompliance to the city, identifying a number of provisions
20 that we believe that they are in noncompliance with. That was
21 issued, I believe, on July 24th.

22 The consent judgment contemplates and requires a
23 45-day meet-and-confer period prior to the parties taking any
24 action. And we thought it was appropriate when that 45-day
25 period is over on September 11th, to advise your party as to

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1 whether any resolution has been reached.

2 THE COURT: And so there's an August 23rd response
3 date by the defendants, and then the September 11th report
4 would be at the end of that.

5 MR. POWELL: 45-day period, yes. The response, again,
6 is required under the consent judgment. We're hopeful that
7 that response, maybe we can reach some agreement as to some
8 facts or noncompliance issues, or maybe not. We continue to be
9 open to discussing with the city next steps here, and we can
10 spend that time as well to do that.

11 It's unfortunate, in our view, that the city is
12 choosing to take an adversarial posture here, instead of taking
13 this as an opportunity to finally address the long-standing
14 systemic problems that have plagued the system well before this
15 mayor and commissioner took their positions. But we are always
16 willing -- open to talk, and I think this 45-day period allows
17 for that, as well as issues with respect to the documents and
18 information that we have requested.

19 THE COURT: Thank you.

20 And just one follow-up question also. There is an
21 issue with respect to a privilege claim. And as I understand
22 it, the parties have taken to meet and confer about that by
23 September 1; and that if that is unresolved by September 11th,
24 the plaintiffs would be able to make an application and trigger
25 a briefing schedule with respect to that discovery dispute; is

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1 that correct? I'll ask Ms. Werlwash, since my notes have it in
2 relation to plaintiffs taking the lead on this issue.

3 MS. WERLWAS: Mary Lynne Werlwash, for the plaintiffs.

4 That is, in part, correct.

5 To clarify, there are multiple privilege and discovery
6 disputes happening right now, and they are each teed up
7 slightly different, whether they are pursuant to a claim of
8 privilege or under different timetables. So there are a couple
9 of different buckets. We hope to resolve all of them as soon
10 as possible.

11 However, we do want to note that that has been -- we
12 didn't -- the city didn't make themselves available to meet for
13 the first time until last Friday on these. And so we had hoped
14 they would be resolved before now, but they haven't.

15 We are deeply concerned with that process. We hope it
16 will work and that we will get answers. We have not, for
17 example, even been able to get answers as to what documents
18 they are claiming privilege over for several days, asking
19 distinctly from a list, saying, which of these are you claiming
20 privilege, and we can't even get an answer on that, which we
21 hoped we could get today.

22 But, in any event, under different -- just to be
23 clear, that we will submit these to the Court under some of the
24 privilege disputes. It's the defendants' obligation under the
25 consent judgment to submit disputes to the Court. In other

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1 words, there's one agreement under which the plaintiffs agreed
2 to bring it before the Court, under the default amended
3 protective order, it's docket number 89 in this case. If the
4 defendants wish to pursue a confidentiality designation, then
5 they need to bring it to the Court.

6 Hopefully, we'll resolve all of these. We will report
7 out what we have or haven't resolved, but that's just one way
8 to clarify that they are in slightly different postures as to
9 who needs to bring it to the Court.

10 THE COURT: Thank you for that clarification.

11 And now I'll hear from the defense.

12 MR. SCHEMITSCH: Yes, your Honor.

13 First, with regard to disputes for documents,
14 defendants initially did request that plaintiffs identify any
15 pages of documents that would be covered by the interim
16 protective order, which would not be subject to the amended
17 protective order in advance of a meet-and-confer that happened
18 last Friday to which defendants did not receive a response in
19 advance of the meet-and-confer.

20 The parties did meet and confer on August 4th
21 regarding which documents remain subject to confidentiality or
22 privilege. Defendants have since produced a privilege log, and
23 we proposed dates to plaintiff for a meet-and-confer, and we
24 will get back to them and confirm those dates for a further
25 meet-and-confer in that process.

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1 THE COURT: And you will engage in an effort to
2 resolve this without -- these issues without litigation.

3 MR. SCHEMITSCH: Yes, your Honor.

4 THE COURT: Of those issues. Thank you.

5 MR. SCHEMITSCH: With respect to a proposed contempt
6 motion, we received plaintiff and the Southern District's
7 noncompliance letter dated July 24th, 2023, regarding some 25
8 provisions which defendants are alleged to be in noncompliance.
9 We will be responding within 30 days, on August 23rd, pursuant
10 to the consent judgment, which I believe the section is section
11 21, paragraph 2.

12 Defendants contend that we are not in contempt of
13 these provisions. As the monitor noted in the April 2023
14 report, the various requirements of the consent judgment and
15 ensuing orders are interconnected, which led to the creation of
16 the action plan intended to set policies and persons in place
17 so the department can make compliance with the consent
18 judgment. Defendants are aware of the urgency of these steps
19 to be taken at a fast pace, and we dispute that the department
20 has not been working diligently in working to meet these
21 conditions. To that end, we oppose plaintiffs' need for a
22 motion for contempt.

23 A receivership is an extraordinary remedy that should
24 not be considered lightly. The department is still enacting
25 change, and defendants reemphasize their commitment to

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1 continuing to make steady progress to achieve sustainable
2 reforms. Should the Court grant the plaintiffs' and Southern
3 District's request for motion practice, we are in agreement
4 with the proposed schedule that was circulated by the monitor
5 in the August 8th, 2023 report.

6 THE COURT: Thank you.

7 I have considered carefully the submissions in advance
8 of today and have listened carefully to everything that has
9 been said here today.

10 The Prison Litigation Reform Act, the PLRA, authorizes
11 the Court to grant prospective relief if the Court finds that
12 relief is narrowly drawn, extends no further than necessary to
13 correct the violation of a federal right that is at issue, and
14 is the least intrusive means necessary to correct the violation
15 of the federal right. And the question that will be addressed
16 in the motion practice is whether there are violations, and
17 what relief, if any, is necessary and meets the requirements of
18 the PLRA.

19 The Court is persuaded that the proposal to move ahead
20 at this time with an application for contempt and/or the
21 appointment of a receiver is appropriate. The submissions, as
22 well as the remarks here today, have made clear that the people
23 incarcerated at Rikers are at a grave risk of immediate harm;
24 and that although some progress is being made, it is not being
25 made at a rate that is commensurate with the perils that are

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1 presented in the period of time over which those perils have
2 existed.

3 The Court concludes that counsel for the plaintiff
4 class and the government have on the record – that includes the
5 monitor's multiple reports – made a sufficiently plausible
6 showing that a finding of contempt and/or the appointment of a
7 receiver could comport with the requirements of Section
8 (a) (1) (A) of the PLRA and, therefore, counsel's request to set
9 a briefing schedule is approved.

10 The Court is deeply concerned about the safety and
11 well-being of every person held at Rikers Island and all of
12 those who work there. The Court is committed to seeing
13 effective reform that improves the safety and overall
14 conditions for those in custody at Rikers and other city jails.

15 By virtue of the use of force focus of the litigation
16 and the consent decree, the Court's attention centers on
17 ensuring that the city and the department implement the
18 structural changes that are necessary to achieve compliance
19 with the requirements of the consent judgment, subsequent
20 remedial orders, and the action plan. The Court has made clear
21 on many occasions that it will hold defendants accountable for
22 maintaining a sustained pace of reform. The Court also made it
23 clear that should the defendants fail to make progress on the
24 reforms necessary to comply with the Court orders in this case,
25 the Court would entertain a renewed motion for contempt and/or

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1 a motion to appoint a receiver.

2 The monitoring team's recent reports and the remarks
3 today indicate, despite the defendants' overall undertakings
4 and reiteration of commitments to sincerity, transparency, and
5 further progress today, that the defendants have not
6 demonstrated by action sufficient willingness or ability to
7 engage productively with the monitoring team, let alone sustain
8 the necessary, significant, and effective progress toward the
9 reforms that are necessary to ensure safety for everyone at
10 Rikers.

11 The application is granted. Defendants must respond
12 to the noncompliance notice by August 23rd of 2023. The
13 parties must file a joint letter to the Court by September
14 11th, 2023, informing the Court of the status of the parties'
15 work regarding the plaintiffs' noncompliance notice.

16 Assuming -- I hate to assume this, but I am realistic.
17 Assuming that the parties' dispute regarding the alleged
18 noncompliance with the Court orders has not been completely
19 resolved by September 11th, 2023, plaintiffs and the government
20 are to file their opening brief on contempt motion practice,
21 contempt and/or receivership, by November 17th, 2023. The
22 defendants must file their opposition by January 16th, 2024.
23 And the reply brief is to be filed by February 15th, 2024.

24 Of course, if the parties come to a consensual
25 resolution of the dispute, the parties are directed to inform

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1 the Court and seek approval of any necessary orders or
2 modifications of schedules. The briefing schedule will be
3 suspended, if appropriate, upon a joint application.

4 The fact that I am authorizing this motion practice
5 does not mean that I have given up on defendants or that my
6 expectations of the department and the city are a millimeter
7 lower. Defendants hold a crucial public trust: Responsibility
8 for the safety of those who have been accused of crimes and are
9 being held for just adjudication of the charges against them.
10 Instead, I've authorized this motion practice because the
11 defendants have not yet shown me that they are willing and able
12 to make the rapid radical changes in the administration of the
13 jails that are necessary to protect the people who have been
14 committed to their custody and those whom defendants employ to
15 guard them.

16 I'm not saying that the progress described in the
17 August 9th, 2023 letter is not a positive development. I'm
18 saying that it is not yet enough, and that it does not appear
19 to signal the thorough and dynamic change that is necessary.

20 Defendants should take these next few months as a
21 challenge to prove that they can and will and are doing what
22 the taxpayers have put them in place to do; and that they
23 deserve the trust of the public and the Court.

24 I expect nothing less than scrupulous compliance with
25 the proposed order that I am entering today. And this includes

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1 transformative change in the defendants' working relationship
2 with the monitor, whose team brings essential added expertise
3 to the challenges facing the jails. Higher expectations for
4 the working methods, standards, and compliance for those whom
5 defendants employ in the jails is also expected and, most
6 important, rapid improvement of the day-to-day results of these
7 efforts is expected.

8 The monitoring team will be watching. I will be
9 watching. And the people of this city and the press will be
10 watching. The loved ones of those who live and those who work
11 in the jails will be watching in justifiable expectation, as
12 well as in hope.

13 I will set a conference date for early December so
14 that we can touch base as to where we are on the schedule that
15 is set forth in the order that I will be signing.

16 Ms. Ng, do you have a late November/early December
17 date that you can give us for a conference?

18 THE DEPUTY CLERK: Yes, Judge.

19 Tuesday, November 28th, 2023, at 2 p.m.

20 THE COURT: Is there anyone who is unavoidably
21 unavailable for November 28th at 2 in the afternoon?

22 It looks like it works for everybody. And so the next
23 conference is set for November 28th, 2023, at 2 in the
24 afternoon.

25 Is there anything further that we need to take up

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1 together, Ms. Freidberg?

2 MS. FREIDBERG: Your Honor, this is my routine
3 request, that the Court order the city to provide a transcript
4 of this proceeding to the Court and the monitoring team at a
5 date you select.

6 THE COURT: Thank you for reminding me.

7 The city is to order a copy of the transcript and
8 provide -- to be provided to the -- each of the Court and to
9 the monitoring team. Is a week's time sufficient or should I
10 order it more -- yes, more rapidly.

11 Madam Reporter, can the transcript be provided by
12 Monday?

13 THE COURT REPORTER: Yes, Judge.

14 THE COURT: By Monday.

15 MS. FREIDBERG: If it wasn't for the fact that I'm
16 having a baby in a week, I would be a little more
17 accommodating, but I appreciate it, your Honor. So thank you.

18 THE COURT: Would it be more prudent and would it be
19 feasible to produce this as an overnight or by the end of the
20 day tomorrow?

21 By the end of the day tomorrow then. Thank you, Madam
22 Reporter, and thank you to the city for making that order and
23 having that transcript provided.

24 And I thank -- this is a difficult situation, to say
25 the least, and I appreciate the way in which each and every

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1 person here has engaged. I have made my expectations very
2 clear. I thank the monitoring team for their persistence,
3 their clarity, and the expertise that they have brought to
4 their duties over these years and that they will continue to
5 bring to their duties. I express certainly my best wishes and
6 hopes, and I think those of everyone here, for safe delivery of
7 Ms. Freidberg of the newest member of this team. And I urge
8 the families of those who are in custody to continue to live in
9 hope, expectation, and watchfulness.

10 Stay safe and keep well, everyone.

11 We are adjourned.

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